

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Auditor - Controller - Treasurer - Tax Collector	(2) MEETING DATE 1/5/2016	(3) CONTACT/PHONE Jim Erb 781-5831	
(4) SUBJECT Request to consider the District Attorney's request for payment of \$2,874.65 to the law firm of Jones and Mayer for the District Attorney's use of outside counsel. All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board of Supervisors consider District Attorney Dan Dow's request for the payment of \$2,874.65 to the law firm of Jones & Mayer for services rendered seeking clarification regarding exempt employee work schedules.			
(6) FUNDING SOURCE(S) District Attorney	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ____) <input type="checkbox"/> Board Business (Time Est. ____)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input checked="" type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date: _____	
(17) ADMINISTRATIVE OFFICE REVIEW <i>Nikki J. Schmidt</i>			
(18) SUPERVISOR DISTRICT(S) All Districts			

County of San Luis Obispo



TO: Board of Supervisors

FROM: James P. Erb, CPA, Auditor - Controller - Treasurer - Tax Collector

DATE: 1/5/2016

SUBJECT: Request to consider the District Attorney's request for payment of \$2,874.65 to the law firm of Jones and Mayer for the District Attorney's use of outside counsel. All Districts.

RECOMMENDATION

It is recommended that the Board of Supervisors consider District Attorney Dan Dow's request for the payment of \$2,874.65 to the law firm of Jones & Mayer for services rendered seeking clarification regarding exempt employee work schedules.

DISCUSSION

Four months after District Attorney Dan Dow took office in November of 2014 a Whistleblower complaint was filed in March 2015 claiming Deputy District Attorneys were receiving up to 9 days off per year as compensation for after hours and weekend search warrant standby duty without legal authority. I notified the District Attorney in a memo on April 8, 2015 that the practice was unauthorized and needed to cease immediately. The District Attorney responded on April 9, 2015 that the "law enforcement officers" calls for assistance related to obtaining search warrants" practice of 30 or more years had been discontinued. The response pointed out that seven other counties provide compensation for law enforcement standby duty but in all the referenced cases the benefit had been authorized by the respective County Board of Supervisors.

Discontinuing the compensatory time off practice brought up questions regarding what authority an elected department head has regarding exempt employee work schedules and providing coverage to law enforcement throughout the County for hours beyond the normal 8 to 5 work schedules. My office and County Counsel opined that substituting standby hours for normal work hours was not an appropriate work schedule shift.

According to the District Attorney, the change was such a significant shift from a long-standing practice he felt compelled to seek an opinion from outside counsel. However, in a County which has created the office of County Counsel, the County Counsel is the exclusive public officer vested with the authority to advise and represent the County and its officers in all legal matters and civil actions. As such, only the Board of Supervisors may authorize the use of outside counsel to respond to an opinion already provided by County Counsel. District Attorney Dow did not seek authorization from the Board of Supervisors prior to contacting Jones & Mayer as outside counsel but is now requesting an after the fact approval. District Attorney Dan Dow believed he was allowed to seek the opinion of Jones and Mayer as professional services within his approved budget.

The legal opinion the District Attorney received from the law firm Jones & Mayer supported the District Attorney's position that it was his right to assign exempt staff to the work schedules, including standby hours, which he deemed necessary to provide adequate staff coverage for after hours law enforcement support. However, the District Attorney ultimately stopped the long term practice and left it to be negotiated between the employee bargaining unit and the County subject to final approval by the County Board of Supervisors.

The long-standing Compensatory Time Off practice has been discontinued in the District Attorney's office. The District Attorney is now aware that any use of outside counsel regarding matters that fall under the authority of County Counsel must be approved by the Board of Supervisors prior to retaining outside counsel services.

OTHER AGENCY INVOLVEMENT/IMPACT

The District Attorney's Office has reviewed this request.

FINANCIAL CONSIDERATIONS

Payment of the \$2,874.65 to Jones and Mayer for outside counsel services would be made from the District Attorney's Board of Supervisors adopted budget for the current fiscal year and would therefore not require an increase in expense appropriation.

RESULTS

The District Attorney's office has discontinued the practice of compensatory time off for law enforcement standby support. Payment of the Jones and Mayer invoice will be the final step in closing the Whistleblower complaint. Discontinuing the Deputy District Attorneys' compensatory time off practice resulted in approximately 1,800 more regular work hours each year.

ATTACHMENTS

1. Request for Payment
2. April 9, 2015 Memo to ACTTC and CAO
3. April 8, 2015 Memo to DA